

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 1/7/2021

C O R A M

THE HONOURABLE Mr.JUSTICE N.SATHISH KUMAR

O.A.No.200 of 2021

Sri Sreenivasa Constructions
rep. By Mr.D.Kiran Kumar Reddy
Registered Office at P.No.35
Street No.3, Sagar Co-operative Housing Society
Road No.2 Banjara Hills
Hyderabad.

Applicant

Vs

1. Shyamala Kumari
2. Mahendra Shanmuganathan
3. Viayendra Shanmuganathan

Respondents

सत्यमेव जयते

Original Application has been filed under Order XIV Rule 8 of
Original Side Rules r/w. Section 9 of the Arbitration and Conciliation Act,
1996, r/w. Section 151 of the Code of Civil Procedure, 1908.

For applicant	...	Mr.G.Vivekanand
For respondents	...	Ms.P.Srividhya for R.R.1 and 3.
		Mr.K.V.Babu for R.2.

ORDER

This Original Application has been filed, to grant an order of interim injunction, restraining the respondents from revoking or cancelling the Power of Attorney, dated 12/3/2018, adjudicated, vide, Adjudication No.39/2018, in the office of the Sub-Registrar, Ashok Nagar and Power of Attorney, dated 7/9/2018, registered as Document No.6199/2018, Book – I, in the office of the Sub-Registrar, Neelankarai, pending Arbitration Proceedings.

2. The facts leading to the disposal of this Original Application are as follows:-

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The first respondent, is the mother of the second and third respondents, executed a settlement deed, dated 23/3/2017, originally, in

favour of her two sons and prior to that she has also entered into a Joint Development Agreement with the applicant. The sons of the first respondent have also executed Supplementary Agreement, dated 16/11/2017, in favour of the applicant and agreed to the terms of Joint Development Agreement.

3. Pursuant to the above settlement, second and third defendants had executed Power of Attorney Deeds, dated 12/3/2018 and 7/9/2018, respectively. As the dispute arose between the parties, Original Application No.242 of 2020 has been filed to grant an order of injunction, restraining the respondents 1 and 3 from in any manner acting on the basis of the Rectification Deed, dated 8/5/2020, registered as Document No.2576 of 2020, with the SRO, Neelankarai, contrary to the terms of the Joint Development Agreement, dated 20/9/2012 and the consequential Supplementary Agreement, dated 16/11/2017, pending disposal of the arbitration proceedings.

4. This Court, vide, order, dated 7/9/2020, allowed O.A.No.242 of

2020, and directed the applicant, therein, to initiate the arbitration proceedings, within a period of three months, from the date of the order and interim injunction was also granted. In the said order, this Court had made it clear that if there is a failure to invoke the arbitration proceedings, within three months, order of injunction passed by this Court will stand vacated automatically. As against which, appeal appears to have been filed and the same was withdrawn. In the meanwhile, an understanding has been reached between the applicant and respondents 1 and 3, wherein the main contesting respondent is not a party.

5. Heard Mr.G.Vivekanand, learned counsel for the petitioner and Ms.P.Srividhya, learned counsel for the respondents 1 and 3 and Mr.K.V.Babu for the second respondent.

6. When the matter was taken up for hearing, through Video Conferencing, the learned counsel appearing for the applicant submitted that as the second respondent has already executed Power of Attorney, in terms of the Agreement, executed to comply with the terms of Joint Development

Agreement, now threatening the applicant to cancel the Power of Attorney. It is his further contention that he is entitled to 60% of the shares in the entire property. Therefore, the Power of Attorney being coupled with interest cannot be cancelled by the respondents herein.

7. As already indicated that this Court, on an earlier occasion, i.e., in O.A.No.242 of 2020, passed an order granting interim injunction in favour of the applicant on 7/9/2020, with a direction to the applicant to invoke the arbitration within a period of three months from the date of order. The above order has been passed taking note of the fact that the first respondent, who is the mother of the second and third respondents had executed rectification deed, wherein she has dealt with the property and restricted to 60% share, originally agreed under the Joint Development Agreement and remaining 40% has been rectified and stated that it should go to the third respondent.

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8. Now, it appears that there is an understanding reached between the mother and one of the brothers of the contesting respondent herein and they

have entered into some contract, wherein the other respondent is not a party. During submission, it is brought to the notice of this Court that challenging the rectification deed, suits were already filed and the same are pending before the Additional District Judge, Chengalpattu, in O.S.No.152 of 2020. It is submitted by the learned counsel for the applicant that both suits are also in respect of 40% of UDS in the land measuring about 45.5 cents.

9. Be that as it may. Admittedly, there is a cloud over the title of the properties. Power of Attorney said to have been executed in pursuant to the agreement originally entered into between the parties. It is to be noted that if 60% of the shares are now allowed to be sold which may lead to the further complication and there will not be a clear title to the third party purchaser also.

10. In view of the above, this Court is of the view that at the present stage, blanket injunction cannot be granted. However, taking note of the nature of the dispute and cloud created over the title, both sides shall maintain the status-quo. As far as document is concerned, the second

respondent is restraining from cancelling the Power of Attorney till the dispute is resolved. The applicant is also restrained from making any alienation or encumbrance over the property till the dispute over the property is resolved.

11. In view of the above both sides have agreed to appoint Mr. Justice K. Venkataraman, Former Judge of Madras High Court, as an Arbitrator.

10. Accordingly, this original petition is ordered as follows:

i) Mr. Justice K. Venkataraman, Former Judge of Madras High Court, residing at L Block, 125, 17th Street, East Anna Nagar, Chennai, (Mobile No. 7708895435) is appointed as a Sole Arbitrator to enter upon reference and adjudicate the matter.

ii] The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing

them, pass an award, as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order.

iii] The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the same shall be borne by the parties equally.

11. This Original Application is ordered accordingly, leaving the parties to bear their own costs.

12. Order passed by this Court shall continue to operate for a further period of three months. In the meanwhile, liberty is granted to the parties to work out their remedy and seek interim relief.

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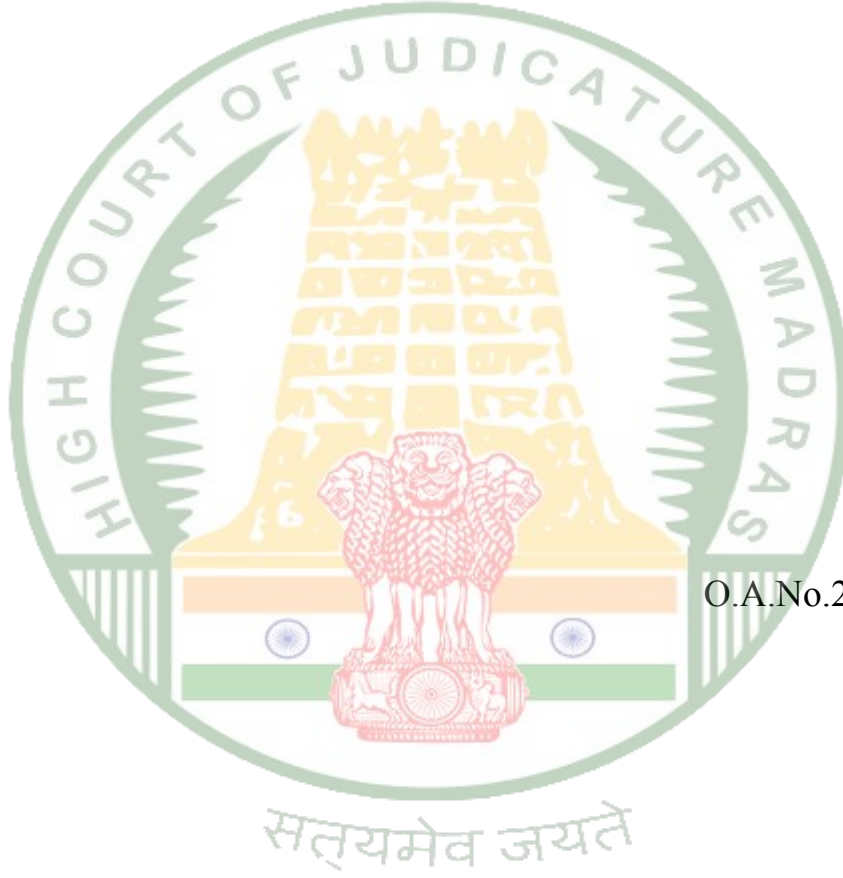
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Note: Issue order copy on 7/7/2021

N.SATHISH KUMAR,J

mvs.



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